IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 2780 (S/S) of 2001
Old Number
(Writ Petition No. 29848 of 1996)

Jagdish Singh, son of late Room Singh,
Resident of Nagla Purvi Budaun,
P.S. – Civil Lines, District – Budaun,
Presently posted as Head Constable,
Police Lines, Pithoragarh. ……Petitioner.

V e r s u s .

1. Senior Superintendent of Police, Nainital.
2. Deputy Inspector General of Police, Kumaon Region, Kumaon, Nainital.
3. Sate of U.P.

……..Respondents.

Hon'ble Rajesh Tandon, J.:

Heard Sri S.K. Mandal, learned counsel for the petitioner and standing counsel for respondents.

By means of this writ petition, the petitioner has prayed for the issue of a writ in the nature of Certiorari quashing the order dated 29.09.1994 passed by Senior Superintendent of Police, Nainital by which an adverse entry was made in the character roll of the petitioner and further integrity certificate has been stopped.

Briefly stated, the petitioner was head Moharir at the relevant time at P.S. Haldwani. In pursuance of the occurrence taken place on 12/13 December, 1993 regarding illegal selling of trees, FIR was lodged as case crime no. 112/FD/93-94. The petitioner thereafter, was suspended on the ground of negligence in duty vide order dated 30.12.1993. The Senior Superintendent of Police, issued notice as to why

adverse entry may not be made into his character roll. Petitioner has filed his written reply. The Senior Superintendent of police, Nainital after full fledged inquiry came to the conclusion that there existed no evidence against the petitioner and on the basis adverse of entry in the character roll, further increment was stopped. Petitioner against the said punishment preferred an appeal before DIG, Kumaon Range.

However, on 25.01.1996 suspension order was revoked. According to the submission of the petitioner appeal filed by the petitioner was heard exparte. According to him even during the inquiry proceeding, he was not afforded any opportunity for cross examination of the witnesses and the statements were not recorded in his presence. Even the copy of the enquiry report was not supplied to the petitioner.

A perusal of the record shows that vide order dated 14.07.1994 petitioner was given a show cause notice on 12.08.1994. The petitioner has replied and ultimately on 29.09.1994 the order was passed awarding the punishment against the petitioner. The relevant punishment order is as under

यद्यपि प्रत्यक्ष साख्य के अभाव में आपके विरूद्व उचित वैधानिक कार्यवाही नही की जा सकी परन्तु गोपनीय जॉज से आपका लकड़ी तस्करों एवं वन माफियों के साथ लिप्त पाया जाना आपकी संदिग्ध सत्यनिष्ठा को परिलक्षित करता है।

अतः आपके स्पष्टीकरण को असंतोषजनक पाते हुये संदर्भित कारण बताओ नोटिस द्वारा आपकी वर्ष 1993 की सत्यनिठा प्रमाण पत्र रोकने के आदेश पारित किये जाते है।

ज्येष्ठ पुलिस अधीक्षक
नैनीताल।

पत्रांक न. 441/93
दिनांक 29.9.94

A perusal of the record shows that during the proceedings of the inquiry petitioner was not present and as such, the punishment awarded to the petitioner is wholly

exparte and even from the order passed by the punishing authority it is fully established that he has been punished on the ground of suspicion alone.

Counter affidavit has been filed by the standing counsel. In para 9 of the counter affidavit it has been mentioned that it will be clear from the departmental enquiry that there was sufficient evidence against the petitioner regarding involvement in the aforesaid incident.

The sole grievance of the petitioner is that he has not been afforded any material with regard to the departmental inquiry even the statement of driver Gajendra Singh has not been recorded in the presence of the petitioner.

Rule 5 of U.P. Police Officer Subordinate Rank (Punishment & Appeal) Rules 1991 provides the procedure for awarding the punishment.

Sub Rule 1 of Rule 14 is attracted in case of major penalty whereas Sub Rule 2 of Rule 14 is attracted in case of minor penalty. In the present case, petitioner has been awarded minor penalty i.e. withholding the increment as well as censure entry.

Sub Rule 2 of Rule 14 is quoted as under:

"Notwithstanding anything contained in Sub – Rule (1) punishments in cases referred to in Sub Rule (2) of Rule 5 may be imposed after informing the police officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him reasonable opportunity of making such representation as he may wish to make against the proposal."

The aforesaid rule applies in case of minor punishment as contained in Clause B of Rule 4 to the following effect.

"Minor Penalties:
(i) Withholding of promotion

(ii) Fine not exceeding one month's pay.
(iii) Withholding of increment including stoppage at an efficiency bar.
(iv) Censure"

The grievance of the petitioner is that only on the basis of suspicion, punishment has been awarded. There is no material against the petitioner and the order passed by the Disciplinary Authority as well as Appellate Authority shows that there was suspicion against the petitioner and as such, the punishment awarded against the petitioner cannot be legally justified. Even in the FIR dated 13.12.1993 the name of the petitioner has not been mentioned.

Petitioner was not permitted to cross examine the said witness and as such, there being no material on record to prove the involvement of the petitioner.

Petitioner has already retired. Order dated 29.09.1994 passed by Senior Superintendent of Police, Nainital is quashed. It will be open for the petitioner to apply for retiral dues, which shall be paid to the petitioner forthwith.

A writ of certiorari is issued quashing the order dated 29.09.1994 passed by Senior Superintendent of Police and the order dated 20.08.1996 passed by DIG, Kumaon Range, Nainital.

Subject to the aforesaid, the writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

February 23, 2006
SKSharma